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FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
DEC 10 2018	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

7 **UNITED STATES DISTRICT COURT**
 8 **DISTRICT OF NEVADA**

-oOo-

9 UNITED STATES OF AMERICA,
 10 Plaintiff,
 11 vs.
 12 STEVEN A. HOLPER, M.D.,
 13 Defendant.

Case No.: 2:18-cr-00037 JAD-NJK

PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A)
and (B)

14 Plaintiff United States of America, by and through DAYLE ELIESON, United States
 15 Attorney, and ROBERT KNIEF and KILBY MACFADDEN, Assistant United States
 16 Attorneys, the Defendant, STEVEN HOLPER, M.D. and the Defendant's attorney, CHRIS
 17 FREY, ESQ., submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A) and (B).
 18

19 **I. SCOPE OF AGREEMENT**

20 The parties to this Plea Agreement are the United States of America and STEVEN
 21 A. HOLPER (the Defendant). This Plea Agreement binds the Defendant and the United
 22 States Attorney's Office for the District of Nevada. It does not bind any other prosecuting,
 23 administrative, or regulatory authority, the United States Probation Office, or the Court.
 24

1 The Plea Agreement sets forth the parties' agreement regarding criminal charges
2 referenced in the Plea Agreement and applicable sentences, fines, restitution, and forfeiture.
3 It does not control or prohibit the United States or any agency or third party from seeking
4 any other civil or administrative remedies directly or indirectly against the Defendant.

5 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

6 A. Guilty Plea. The Defendant knowingly and voluntarily agrees to plead guilty
7 to the Criminal Indictment filed February 7, 2018:

8 **Count Two:** Distribution of a Controlled Substance, in violation of Title 21, United
9 States Code, Section 841(a)(1) and (b)(1)(C).

10 At the time of sentencing, the Government will move to dismiss the remaining counts
11 of the Criminal Indictment.

12 B. Waiver of Trial Rights. The Defendant acknowledges that he has been advised
13 and understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain
14 rights guaranteed to all Defendants by the laws and the Constitution of the United States.
15 Specifically, the Defendant is giving up:

16 1. The right to proceed to trial by jury on all charges, or to a trial by a
17 judge if the Defendant and the United States both agree;

18 2. The right to confront the witnesses against the Defendant at such a trial,
19 and to cross-examine them;

20 3. The right to remain silent at such a trial, with assurance that his silence
21 could not be used against him in any way;

22 4. The right to testify in his own defense at such a trial if he so chooses;

23 5. The right to compel witnesses to appear at such a trial and testify in the
24 Defendant's behalf, and;

1 6. The right to have the assistance of an attorney at all stages of such
2 proceedings.

3 C. Withdrawal of Guilty Plea. The Defendant will not seek to withdraw his
4 guilty plea after he has entered it in court.

5 D. Additional Charges. The United States agrees not to bring any additional
6 charges against the Defendant arising out of the investigation in the District of Nevada which
7 culminated in the Criminal Indictment and this Plea Agreement and based on conduct
8 known to the United States, except that the United States reserves the right to prosecute the
9 Defendant for any crime of violence as defined by 18 U.S.C. § 16 in which the Defendant
10 may have participated.

11 **III. ELEMENTS OF THE OFFENSES**

12 **Count Two:** The elements of Distribution of Controlled Substance in violation of 21
13 U.S.C. §§ 841(a)(1) and (b)(1)(C) are:

14 First, beginning on a date unknown but in no earlier than July 2015 and continuing
15 through on or about March 2016, the Defendant knowingly distributed Schedule II controlled
16 substances, to wit: Fentanyl;

17 Second, the Defendant knew that the controlled substances were Fentanyl, or some
18 other prohibited drug;

19 Third, the Defendant distributed the controlled substances outside the usual course of
20 professional practice and not for a legitimate medical purpose; and

21 Fourth, the Defendant intended to distribute the controlled substances outside the
22 course of his professional practice.

23 Ninth Cir. Model Criminal Jury Instr., Criminal 9.18; Title 21 C.F.R. § 1306.04;
24 *United States v. Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006).

1 **IV. FACTS SUPPORTING GUILTY PLEA**

2 A. The Defendant will plead guilty because he is, in fact and under the law, guilty
3 of the crimes charged.

4 B. The Defendant acknowledges that if he elected to go to trial instead of pleading
5 guilty, the United States could prove his guilt beyond a reasonable doubt and establish its
6 right to forfeit the specified property by preponderance of the evidence. The Defendant
7 further acknowledges that his admissions and declarations of fact set forth below satisfy every
8 element of the charged offense.

9 C. The Defendant waives any potential future claim that the facts he admitted in
10 this Plea Agreement were insufficient to satisfy the elements of the charged offense.

11 D. Both the United States and the Defendant agree that this section of the Plea
12 Agreement does not contain all of the relevant information known to the Defendant. The
13 parties also agree that the facts contained in Section IV provide a sufficient factual basis for
14 the crime to which Defendant is pleading guilty, but the facts contained in Section IV are not
15 an exhaustive statement by the Defendant.

16 E. The Defendant admits and declares under penalty of perjury that the facts set
17 forth below are true and correct:

18 At all times relevant to the Criminal Indictment:

19 1. The Defendant, STEVEN A. HOLPER, M.D. ("Defendant"), was a licensed
20 physician who, since 1990, practiced medicine in Nevada under Nevada License Number
21 6061, specializing in pain management in Las Vegas, Nevada.

22 2. As part of his medical practice, he prescribed Schedule II Controlled
23 Substances, including Fentanyl, Hydrocodone and Oxycodone, under his Drug Enforcement
24 Administration ("DEA") license number BH2498106.

1 3. Defendant knew that under the Controlled Substances Act, Title 21, United
2 States Code, Section 841(a) *et seq.*, and Title 21, Code of Federal Regulations, Section
3 1306.04, a prescription for a Schedule II controlled substance was lawful only when written
4 for a legitimate medical purpose by a practitioner acting in the usual course of his or her
5 professional practice.

6 4. Between approximately July 2015 and March 2016, Defendant prescribed and
7 distributed dosages and amounts of Fentanyl, Oxycodone and Hydrocodone, to his patients
8 outside the usual course of his professional practice and without a legitimate medical
9 purpose.

10 5. Defendant did so with the intent to prescribe Fentanyl, Oxycodone and
11 Hydrocodone outside the course of his professional practice and without a legitimate medical
12 purpose.

13 6. All of the foregoing occurred in the State and Federal District of Nevada and
14 elsewhere.

15 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

16 The facts set forth in Section IV of this Plea Agreement shall be admissible against
17 the Defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the
18 Defendant does not plead guilty or withdraws his guilty plea, the facts set forth in Section IV
19 of this Plea Agreement shall be admissible at any proceeding, including a trial, for
20 impeaching or rebutting any evidence, argument or representation offered by or on the
21 Defendant's behalf. The Defendant expressly waives all rights under Fed. R. Crim. P. 11(f)
22 and Fed. R. Evid. 410 regarding the use of the facts set forth in Section IV of this Plea
23 Agreement.

24 . . .

1 VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

2 A. Discretionary Nature of Sentencing Guidelines. The Defendant
 3 acknowledges that the Court must consider the United States Sentencing Guidelines
 4 ("USSG" or "Sentencing Guidelines") in determining the Defendant's sentence, but that the
 5 Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose
 6 any reasonable sentence up to the maximum term of imprisonment permitted by statute.

7 B. Offense Level Calculations. The parties stipulate to the following calculation
 8 of the Defendant's offense level under the Sentencing Guidelines, acknowledge that these
 9 stipulations do not bind the Court, and agree that they will not seek to apply any other
 10 specific offense characteristics, enhancements or reductions:

11 The Defendant acknowledges that the statutory maximum sentence and any statutory
 12 minimum sentence limit the Court's discretion in determining the Defendant's sentence
 13 notwithstanding any applicable Sentencing Guidelines provisions.

14 **Group 1: Count 2: 21 U.S.C. §§ 841(a)(1), (b)(1)(C)**

Offense Level Calculation	USSG
Base Offense Level ¹	26
Use of Special Skill	+2
Adjusted Offense Level (Subtotal)	28
Contingent Reduction for Acceptance of Responsibility	-2
Contingent Reduction for Government Motion for Acceptance of Responsibility	-1
Final Adjusted Offense Level	25

22 ¹ The Group 1 base offense level was calculated as follows: there were distributions of
 23 Fentanyl, Oxycodone and Hydrocodone totaling the equivalency of 410 kg of marijuana. The
 24 parties stipulate to this calculation for purposes of sentencing only, using the USSG
 Guidelines Manual effective November 1, 2016.

1 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG §
2 3E1.1(a), the United States will recommend that the Defendant receive a two-level
3 downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit
4 facts establishing a factual basis for the guilty plea when he enters the plea; (b) fails to
5 truthfully admit facts establishing the amount of restitution owed when he enters his guilty
6 plea; (c) fails to truthfully admit facts establishing the forfeiture allegations when he enters
7 his guilty plea; (d) provides false or misleading information to the United States, the Court,
8 Pretrial Services, or the Probation Office; (e) denies involvement in the offense or provides
9 conflicting statements regarding his involvement or falsely denies or frivolously contests
10 conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits or
11 attempts to commit any crime; (h) fails to appear in court; or (i) violates the conditions of
12 pretrial release.

13 Under USSG §3E1.1(b), if the Court determines that the Defendant's total offense
14 level, before operation of § 3E1.1(a), is 16 or higher, and if the United States recommends a
15 two-level downward adjustment pursuant to the preceding paragraph, the United States will
16 move for an additional one-level downward adjustment for acceptance of responsibility
17 before sentencing because the Defendant communicated his decision to plead guilty in a
18 timely manner that enabled the United States to avoid preparing for trial and to efficiently
19 allocate its resources.

20 D. Criminal History Category. The Defendant acknowledges that the Court may
21 base his sentence in part on the Defendant's criminal record or criminal history. The Court
22 will determine the Defendant's Criminal History Category under the Sentencing Guidelines.

23 E. Relevant Conduct. The Court may consider any counts dismissed under this
24 Plea Agreement and all other relevant conduct, whether charged or uncharged, in

1 determining the applicable Sentencing Guidelines range and whether to depart from that
2 range.

3 F. Additional Sentencing Information. The stipulated Sentencing Guidelines
4 calculations are based on information now known to the parties. The parties may provide
5 additional information to the United States Probation Office and the Court regarding the
6 nature, scope, and extent of the Defendant's criminal conduct and any aggravating or
7 mitigating facts or circumstances. Good faith efforts to provide truthful information or to
8 correct factual misstatements shall not be grounds for the Defendant to withdraw his guilty
9 plea. The Defendant acknowledges that the United States Probation Office may calculate
10 the Sentencing Guidelines differently and may rely on additional information it obtains
11 through its investigation. The Defendant also acknowledges that the Court may rely on this
12 and other additional information as it calculates the Sentencing Guidelines range and makes
13 other sentencing determinations, and the Court's reliance on such information shall not be
14 grounds for the Defendant to withdraw his guilty plea.

15 **VII. APPLICATION OF SENTENCING STATUTES**

16 A. Maximum Penalty. The maximum penalty under 21 U.S.C. §§ 841(a) and
17 841(b)(1)(C) is 20 years imprisonment, a fine of \$1,000,000, or both. The maximum penalty
18 under 18 U.S.C. §1035(a)(2) is 5 years imprisonment, a fine of \$250,000, or both.

19 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth
20 in 18 U.S.C. § 3553(a) in determining the Defendant's sentence. However, the statutory
21 maximum sentence and any statutory minimum sentence limit the Court's discretion in
22 determining the Defendant's sentence.

23 C. Parole Abolished. The Defendant acknowledges that his prison sentence
24 cannot be shortened by early release on parole because parole has been abolished.

1 D. Supervised Release. In addition to imprisonment and a fine, the Defendant
2 will be subject to a three-year term of supervised release. Supervised release is a period of
3 time after release from prison during which the Defendant will be subject to various
4 restrictions and requirements. If the Defendant violates any condition of supervised release,
5 the Court may order the Defendant's return to prison for all or part of the term of supervised
6 release, which could result in the Defendant serving a total term of imprisonment equal to
7 the statutory maximum prison sentence of 20 years imprisonment.

8 E. Special Assessment. The Defendant will pay a \$100.00 special assessment per
9 count at the time of sentencing.

10 **VIII. POSITIONS REGARDING SENTENCE**

11 The Government will recommend that the Court sentence the Defendant to a
12 sentence within the Sentencing Guidelines range as determined by the Court.
13 Notwithstanding its agreement to recommend that the Defendant be sentenced as described
14 in this Plea Agreement, the United States reserves its right to defend any lawfully imposed
15 sentence on appeal or in any post-conviction litigation.

16 The Defendant may seek a downward adjustment pursuant to 18 U.S.C. § 3553,
17 including probation, from any sentence the Court may impose.

18 The Defendant acknowledges that the Court does not have to follow these
19 recommendations.

20 **IX. RESTITUTION**

21 In exchange for benefits received under this Plea Agreement, the Defendant agrees to
22 make full restitution in an amount to be determined by the Court for all of the losses the
23 Defendant caused by his schemes or offenses, whether charged or uncharged, pleaded to or
24 not, and by all of his relevant conduct. 18 U.S.C. § 3663(a)(3).

X. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS

Before or after sentencing, upon request by the Court, the United States, or the Probation Office, the Defendant will provide accurate and complete financial information, submit sworn statements, and/or give depositions under oath concerning his assets and his ability to pay. The Defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will release funds and property under his control in order to pay any fine, forfeiture, or restitution ordered by the Court.

XI. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS

A. Plea Agreement and Decision to Plead Guilty. The Defendant acknowledges that:

(1) He has read this Plea Agreement and understands its terms and conditions:

(2) He has had adequate time to discuss this case, the evidence, and this Plea Agreement with his attorney.

(3) He has discussed the terms of this Plea Agreement with his attorney;

(4) The representations contained in this Plea Agreement are true and correct, including the facts set forth in Section IV; and

(5) He was not under the influence of any alcohol, drug, or medicine that would impair his ability to understand the Agreement when he considered signing this Plea Agreement and when he signed it.

The Defendant understands that he alone decides whether to plead guilty or go to trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought against him, his possible defenses, and the benefits and possible detriments of

1 proceeding to trial. The Defendant also acknowledges that he decided to plead guilty
2 voluntarily and that no one coerced or threatened his to enter into this Plea Agreement.

3 B. Waiver of Appeal and Post-Conviction Proceedings. The Defendant
4 knowingly and expressly waives: (a) the right to appeal any sentence imposed within or
5 below the applicable Sentencing Guideline range as determined by the Court; (b) the right to
6 appeal the manner in which the Court determined that sentence on the grounds set forth in
7 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of the conviction or sentence
8 and any order of restitution or forfeiture.

9 The Defendant also knowingly and expressly waives all collateral challenges,
10 including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure
11 by which the Court adjudicated guilt and imposed sentence, except non-waivable claims of
12 ineffective assistance of counsel.

13 The Defendant reserves only the right to appeal any portion of the sentence that is an
14 upward departure or an upward variance from the Sentencing Guidelines range determined
15 by the Court.

16 The Defendant acknowledges that the United States is not obligated or required to
17 preserve any evidence obtained in the investigation of this case.

18 C. Removal / Deportation Consequences. The Defendant understands and
19 acknowledges that if he is not a United States citizen, then it is highly probable that he will
20 be permanently removed (deported) from the United States as a consequence of pleading
21 guilty under the terms of this Plea Agreement. The Defendant has also been advised if his
22 conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and
23 removed from the United States and will not be allowed to return to the United States at any
24 time in the future. The Defendant desires to plead guilty regardless of any immigration

1 consequences that may result from his guilty plea, even if the consequence is automatic
2 removal from the United States with no possibility of returning. The Defendant
3 acknowledges that he has specifically discussed these removal / deportation consequences
4 with his attorney.

5 **XII. ADDITIONAL ACKNOWLEDGMENTS**

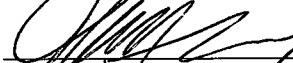
6 This Plea Agreement resulted from an arms-length negotiation in which both parties
7 bargained for and received valuable benefits in exchange for valuable concessions. It
8 constitutes the entire agreement negotiated and agreed to by the parties. No promises,
9 agreements or conditions other than those set forth in this agreement have been made or
10 implied by the Defendant, the Defendant's attorney, or the United States, and no additional
11 promises, agreements or conditions shall have any force or effect unless set forth in writing
12 and signed by all parties or confirmed on the record before the Court.

13 DAYLE ELIESON,
United States Attorney

14 DATE 12.10.18

15 
KILBY MACFADDEN
Assistant United States Attorney

16 DATE 12/10/18

17 
CHRIS FREY
Counsel for the Defendant

18 DATE 12/10/18

19 
STEVEN A. HOLPER, M.D., Defendant